

Metropolitan Center for Visual Arts at Rockville

Background Information

The Metropolitan Center for the Visual Arts, Inc. at Rockville (VisArts), formerly Rockville Arts Place, Inc. (RAP) was previously located in downtown Rockville in the lower level of the Magruder's Shopping Center. Along with the rest of the original buildings in this block, the RAP facility was demolished to make way for the redevelopment of the block that is now Rockville Town Square. The City committed to working with all of the Magruder's Center business owners, RAP included, to offer the opportunity to return to Rockville Town Center as part of the new development. In the earliest concept plans for Town Square the Rockville Arts and Innovation Center building was included, with the intent of providing a new home for VisArts.

Discussions of specific plans to construct a cultural arts center, with VisArts as the primary tenant, began in early 2004. A binding Memorandum of Understanding (MOU) that defined the agreements between the City and VisArts for the financing and usage by VisArts of two full floors, plus a ground-level retail space was approved by the Mayor and Council at their meeting of December 6, 2004, and executed on December 10, 2004. The MOU addressed agreements between RAP and the City on the following key subjects and action plans:

- Description of RAP's dedicated space
- Ownership and management of the building
- Lease terms, commencement date and lease rates
- Responsibilities of the City and RAP for design, construction and contracting
- Responsibilities of the City and RAP for operating expenses
- RAP's responsibilities for fundraising to cover cost of interior build out
- The required schedule for RAP's fundraising
- RAP's responsibility to cover the entire cost of the interior build out
- RAP's responsibility to operate continuously in the new facility at a level acceptable to the City
- Roof rights, including management and usage of a planned Roof Garden space
- Design and usage of RAP's retail-level space
- The City's rights to use event spaces in RAP's premises
- The City's right to approve any proposed changes to RAP's name

As called for in the MOU and the lease, VisArts paid for all interior build out costs for their leased space.

NOTE: During the years RAP was located in the Magruder's Shopping Center, the City held the master lease for approximately 12,000 square feet of the occupied space. Based on a land swap deal with the shopping center owner, the City's annual cost for this lease was zero. RAP expanded their space in the early 1990s by obtaining a separate lease for an additional 4,000 square feet. Throughout the seventeen years when RAP was located in the former shopping center, the City did not charge any rent to RAP and provided an annual operating budget grant that ranged from \$75,000 in the early years to \$40,000 in the later years. The City's property tax for this space, which in the final years amounted to approximately \$26,000 annually, was deducted from the grant.

Under the terms of the proposed lease for VisArts in the Arts and Innovation Center, which is based on the MOU, VisArts receives no annual operating grant from the City and pays rent for the space, albeit a small annual amount.

Summary of Lease Terms

Outlined below are the key elements of the terms of the lease of City-owned space in the Arts and Innovation Center building by the Metropolitan Center for the Visual Arts at Rockville, Inc. (hereinafter VisArts).

Premises – Leased Space (p. 3)

The space leased to VisArts includes the entire second and third floors of the Arts and Innovation Center building, which are approximately 12,000 square feet each, and a storefront space on the first floor (street/retail level) of approximately 1,200 square feet that contains the VisArts retail shop.

Lease Term and Commencement Date (Sec. 2.1, pp. 4-5)

The lease term is for twenty (20) years and commenced on August 1, 2007, the date on which the City issued the Occupancy Permit for the VisArts spaces.

Lease Extension Options (Sec 2.2, pp. 5-7)

The lease contains options for four (4), five (5)-year extensions. Extensions of the lease must have the mutual approval of both the City and VisArts.

Base Rent (Sec 3.1, pp. 7-8)

For the first year, the base rent for the space is \$25,000 per year. The rent will increase each year by three percent (3%). In year twenty of the lease, the rent will be \$43,838. Rent payments are due in twelve (12) monthly installments.

NOTE: The lease contains a provision to allocate the first year's lease payments over lease years two, three and four. The purpose of this provision is to allow VisArts a period of time to ramp up their programs, classes, rentals, etc. during the first year, prior to the beginning of required rent payments.

Maintenance Obligations and Costs (Sec 4, pp. 9-10)

Maintenance Obligations of the City (Landlord) (Sec 4.1, p. 10)

The City, at its sole cost and expense will provide the following operational and maintenance services related to the building. NOTE: Expenses marked with an asterisk will be shared among the three condominium owners, according to the percentage allocations in the condominium documents (51.5% City; 36.7% Montgomery County; 11.8% Federal Realty). Other maintenance items that only pertain to the City- and Montgomery County-owned floors of the building will be split 50-50 as indicated.

1. Landscaping installation and maintenance*
2. Repair and maintenance of the façade and roof of the building*
3. Repair and maintenance to the building main lobby (50-50 split between City and Montgomery County)
4. Elevators (50-50 split between City and Montgomery County)
5. Electrical and plumbing systems serving the building (including electrical service that leads to the Tenant's [VisArts] circuit breaker panels and plumbing lines that lead to the point where plumbing service is stubbed to the premises)
6. Routine, scheduled preventative maintenance on the building's electrical and HVAC systems
7. Repair and/or replacement of exterior windows and doors leading to the exterior of the building (50-50 split between City and Montgomery County)
8. Removal of snow from the sidewalks surrounding the building* (performed by Town Center Management District – the combined condominium owners will contribute to this cost)

9. Repairs and non-routine maintenance to the building's electrical and HVAC systems located outside the Tenant's premises*
10. Repairs and routine maintenance to the building's security system for the exterior doors (excluding the parts of the security system that solely serve the Tenant's premises (50-50 split between City and Montgomery County)).

Maintenance Services Provided by the City at VisArts' Expense (Optional) (Sec 4.2.1, p. 10)

The City agrees to perform the following operational and maintenance services, should VisArts request such services, and *at the sole cost and expense of VisArts*:

1. Repair and replacement of light fixtures within the leased premises
2. Repair and replacement of the HVAC systems within the leased premises
3. Repair and maintenance of the plumbing fixtures and electrical systems within the leased premises
4. Repair and replacement of ceiling tiles within the leased premises
5. Custodial cleaning within the leased premises.

Maintenance Obligations of VisArts (Tenant) (Sec 4.2.2, pp. 10-11)

VisArts, at its sole cost and expense will provide the following operational and maintenance services related to their leased space:

1. Payment of utilities used or consumed within the leased premises
2. Custodial maintenance performed within the leased premises
3. Maintenance of the interior building elements and equipment within the leased premises
4. Replacement of equipment serving the leased premises, as necessary
5. Maintenance of the security system serving the leased space.

Use of Premises by VisArts – (Sec 5, pp. 11-12)

Tenant will use the Premises continuously and only for an art facility with retail, gallery and administrative offices, which include, but are not limited to, the following purposes:

- a) Craft shop
- b) Art galleries, including a main exhibition gallery, a community exhibition gallery, and a children's hands-on discovery gallery,
- c) Artist studios and artist gallery shop,
- d) Teaching areas, including but not limited to, a ceramics studio, glass studio, wood studio, and a digital animation lab,
- e) Events, seminars, parties, and conferences with or without food and beverages, including, but not limited to, alcoholic beverages, and camps and classes.

Tenant will not change its use of the Premises without Landlord's prior written consent, which consent may be withheld in the exercise of Landlord's sole, absolute and subjective discretion. Landlord agrees that during the Term, Tenant shall have the right to temporarily close the Premises (or any part thereof and not including the retail shop) during Tenant's slow periods (i.e., August and the week between Christmas and New Year) provided that Tenant sends the City written notice of such temporary closure at least thirty (30) days in advance of such closure, and receives the approval of the City, which will not be unreasonably withheld.

First Floor Area (Retail Shop) (Sec 5.2, p. 12)

Tenant shall provide for the operation of an art gallery or a retail shop, or both, on the first floor portion of the Premises. Tenant shall not make any other use of the First Floor Area without Landlord's prior written consent, which consent may be withheld in the exercise of Landlord's sole, absolute and subjective discretion. The hours of operation for the Retail

Shop shall be 10:00 a.m. to 9:00 p.m. Monday through Saturday and 12:00 noon to 6:00 p.m. on Sundays. The Tenant may extend its hours of operation for special events.

City's Right to Use Public Spaces for Meetings and Events (Sec 5.3, p. 12)

The City shall have the right to use the VisArts main Event Room (2,500 square feet), with no rental fee, for any functions sponsored by the Landlord up to twelve (12) times per calendar year for meetings and events by providing Tenant with at least thirty (30) days' prior written notice; provided, however, in no event may Landlord use such Event Room for more than two (2) Saturdays per Lease Year, unless otherwise mutually agreed to by the parties. The City will be responsible for setup and cleanup of the Event Room before and after such uses.

VisArts Operations – Generally (Sec 5.4, p. 12)

As a material inducement for Landlord to enter into this Lease, Tenant shall schedule its programs, events, and activities within the Premises so as to maximize attendance, particularly during times of the day and week when it is most desirable to generate a lively and busy environment within the Town Center (such as during the lunch hour, evening hours, and on weekends).

Minimally Acceptable Operations Level (Sec 5.4.1, pp. 12-14)

VisArts shall conduct its operations from the Premises at a Minimally Acceptable Operations Level. For purposes of this Lease, "Minimally Acceptable Operations Level" means that Tenant shall operate and conduct business from the Premises in accordance with the following minimal levels. The Tenant may extend its hours of operation of any part of the Premises for special events and may also shorten its hours of operation for any part of the Premises in order to prepare the Premises (or any part thereof) for any special events.

Tenant shall operate and keep open to the general public between the hours of 10:00 a.m. to 7:00 p.m. on weekdays, between the hours of 10:00 a.m. to 7:00 p.m. on Saturdays, and between the hours of 12:00 p.m. to 5:00 p.m. on Sundays three art galleries, a main art gallery, a community art gallery and a children's art gallery, each with a regular series of weekly, biweekly shows or eight (8) week long shows. The art gallery program will include art shows, opening receptions, artists' talks, and other events. Tenant shall regularly advertise these events to the general public through means calculated to maximize attendance.

Tenant shall, regularly hold or conduct art-related classes, workshops and demonstrations geared to all age groups, as well as multiple summer art camps for children. It is understood that classes and camps are operated in sessions with breaks in between. Tenant shall regularly advertise these programs to the general public through means calculated to maximize attendance.

Tenant shall actively market and rent on a continuous and ongoing basis, and in a commercially reasonable manner, the artists-in-residence studios located within the Premises. Tenant shall require that the artists-in-residence studios be open a minimum of thirty (30) hours per week in addition the artists-in-residence studios must also be open during all gallery openings and open houses.

Tenant shall regularly provide classes, artists, and others with access to specialized studios which may contain equipment for photography, photo laboratories for both digital and film prints, glass, woodworking and others. Tenant shall make sure that the equipment is in good working order and condition, and accessible between the hours of 10:00 a.m. to 7:00 p.m. on weekdays, between the hours of 10:00 a.m. to 7:00 p.m. on Saturdays, and

between the hours of 12:00 p.m. to 5:00 p.m. on Sundays. Public access to these specialized studios will be available during scheduled classes and open studios.

Tenant shall hold on a monthly basis publicly advertised special events which shall include, but not be limited to, receptions, special children's programs and teen program and arts and craft shows, including arts and crafts shows to be staged in the Town Square.

Tenant shall operate the retail shop on the first floor of the Arts and Innovation Center between the hours of 10:00 a.m. to 9:00 p.m. on weekdays, between the hours of 10:00 a.m. to 9:00 p.m., on Saturdays, and between the hours of 12:00 p.m. to 6:00 p.m. on Sundays. Tenant shall keep the retail stocked with inventory (including, but not limited to, artist produced items, fine crafts, and gifts).

Tenant shall actively market and rent in a commercially reasonable manner the large "Event Room," and the two galleries, and certain classrooms, for social events, weddings, bar/bat mitzvahs, meetings, and comparable activities.

Amendments to Minimally Acceptable Operations Level (Sec. 5.4.2, pp. 13-14)

From time to time as necessary and/or appropriate the Landlord and Tenant may, by mutual agreement, amend the terms and definitions of Acceptable Operations Level. This may become necessary in order for Tenant to adjust the uses of various rooms in the facility based on changes in the desires of customers, artists, and the public in general.

Violation of Minimally Acceptable Operations Level (Sec. 5.4.3, p. 14)

If Tenant fails to conduct business from the Premises at a Minimally Acceptable Operations Level (in any or all categories as set forth in the table above) and in lieu of any other notice of default and opportunity to cure as may be set forth in this Lease, Tenant shall have a period of ninety (90) days from written notice from Landlord within which to bring the operation of the Premises into compliance with the Minimally Acceptable Operations Level. If Tenant fails to bring the operation of the Premises into compliance with this requirement by the end of such ninety (90) day period, Landlord shall have the right at any time thereafter to terminate this Lease.

Roof Garden and Related Use of Event Room (Sec 5.5, p. 14)

The parties acknowledge that the City (Landlord) is constructing a roof space for public use ("Roof Garden") on the Building, which Roof Garden shall be owned, controlled, maintained and scheduled by the City. The Roof Garden will contain a caterer's kitchen with warming trays, sink and dishwasher; two (2) unisex bathrooms; and a storage area. If an event is scheduled in the Roof Garden by the City, then the City may reserve the Event Room, if such Event Room is available, to accommodate any inclement weather that could prevent the use of such Roof Garden. Any use of the Event Room as a backup for the Roof Garden must be coordinated and scheduled with VisArts (Tenant). The City shall be responsible for the setup and clean up of the Event Room for these backup uses. The City acknowledges that the Event Room may be previously booked unless the City schedules the use of such Event Room prior to the rental of the Roof Garden. The City shall pay VisArts eighty percent (80%) of the standard rental cost on Friday and Saturday and forty percent (40%) Sundays through Thursdays that VisArts charges to other parties to use the Event Room, together with the costs of supplies, setup and clean up, if any.

NOTE: The rental fees paid to VisArts for backup uses of the Event Room will be a pass through of fees paid by Rooftop Garden renters who choose to rent the backup space in case of inclement weather.

Assignment of the Lease (Sec 6.1, p. 15)

NOTE: "Assigning the lease" most commonly refers to a decision by VisArts to turn over the lease for the entire space to another entity, which must be another 501(c)(3), non-profit, cultural arts organization. This cannot occur without the City's approval. There are other more technical definitions of Assignment as described in this section of the lease. The lease includes detailed procedures that must be followed if a Lease Assignment is proposed. Assignment does *not* refer to rentals of artists-in-residence studios, rentals of the Event Room, classrooms, galleries, etc. for social events, weddings, etc.

Assignment Profit (Sec 6.5, pp. 16-17)

If Landlord consents to an assignment of this Lease, Tenant will pay to Landlord fifty percent (50%) of any Assignment Profit (as defined below) Tenant derives from such assignment.

Subletting by VisArts (Sec 7, p. 17)

NOTE: "Subletting" refers to a decision by VisArts to rent out a portion of their leased space to another entity, which must be another 501(c)(3), non-profit, cultural arts organization. This cannot occur without the City's approval. The lease includes detailed procedures that must be followed if a Sublet is proposed.

Subletting does *not* refer to rentals of artists-in-residence studios, rentals of the Event Room, classrooms, galleries, etc. for social events, weddings, etc.

Sublet Space; Sublease Profit (Sec. 7.4, pp. 18-19)

Tenant will pay to Landlord fifty percent (50%) of any Sublease Profit (as defined below) derived by Tenant from such subletting.

Alterations to the Leased Space (Sec 8, pp. 19-22)**General (Sec 8.1, p. 19)**

Tenant may not make or permit anyone to make any alterations, additions, substitutions, installations, changes, or improvements, structural or otherwise, in or to the Premises (including any Tenant Work) or the rest of the Property without Landlord's prior written consent (which consent Landlord will grant or withhold in the exercise of its reasonable discretion), except that Landlord's consent will not be required for any Alteration to the Premises that is purely cosmetic or decorative and is not visible from the exterior of the Building.

Signs (Sec 9, pp. 22-23)**Exterior Signage (Sec. 9.1.1, p. 23)**

Landlord agrees that Tenant shall have the right to place permanent and temporary exterior signs identifying the tenancy of Tenant and any special events or show on the exterior of the Building *provided; however*, that (a) the design, dimensions, construction, illumination, and location of the Exterior Signage shall be mutually satisfactory to Landlord and Tenant in all respects, (b) the Exterior Signage is not prohibited by any Applicable Laws or by any action or rule of any landmark commission having jurisdiction, and (c) all consents necessary from all governmental authorities and landmark commissions having jurisdiction are reasonably obtainable and are first obtained.

Signage Costs (Sec. 9.1.2, p. 23)

Tenant will bear the costs associated with creating, designing, manufacturing, and installing the Exterior Signage. Tenant shall bear the cost of illuminating the Exterior Signage and all costs of operating and maintaining such illumination (including bulbs and ballasts) and all costs of insuring and maintaining the Exterior Signage.

Naming Rights for Premises (Sec. 9.3, p. 24)

Tenant shall have the right to name any rooms, galleries, studios, classrooms or other spaces within the Premises during the term of this Lease for any individual, business, or foundation without the prior written consent of Landlord.

Change in Tenant's Name (Sec 9.4, p. 24)

Landlord shall have the right to approve any change in Tenant's name.

Insurance Requirements for VisArts (Sec. 11, pp. 22-23)

The Lease requires VisArts to obtain an insurance policy or policies covering their liability, property, business income, worker's compensation, and excess liability. Staff has verified that VisArts has obtained an acceptable insurance policy.

NOTE: The Lease contains additional provisions standard to commercial leases, but not outlined herein.